HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.8252 of 2007

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Between:

M. Anjaiah and another. …Petitioners

And

M/s. Sai Constructions, a partnership firm
having its office at Plot No.2-3, Janaki Enclave,
Lingojiguda, Saroornagar, Ranga Reddy District,
Represented by its Managing Partner
and nine others. ….Respondents.

:: O R D E R ::

Counsel for the petitioners : Sri P. Radhakrishna

20th April, 2007

Per G.S. SINGHVI, C.J.

Petitioners, M. Anjaiah and his wife Smt. M. Saraswathi have filed this petition under Article 226 of the Constitution of India for issue of a mandamus to respondent Nos.4 to 6 to remove the illegal and unauthorized construction made by respondent Nos.1 to 3 in premises bearing Municipal Nos.3-5-1112 and 3-5-1113 measuring 423.77 square yards and 3-5-1111/5 to 13, 3-5-1112 and 3-5-1113 (measuring 1089 square yards) situated at Raj Mohalla, Narayanguda, Hyderabad. They have further prayed for issue of a direction to the State Government to take action against respondent Nos.4 to 9 in allowing respondent Nos.1 to 3 to construct a commercial-cum-residential building in violation of building permit No.194/94, dated 16-10-2002 and order dated 22-11-2002 passed by VI Junior Civil Judge, City Civil Court, Hyderabad in I.A.No.2095 of 2002 in O.S.No.6306 of 2002.

The aforementioned prayers of the petitioners are founded on the following assertions:

i) that respondent Nos.2 and 3 got permission from the competent authority of the Municipal Corporation of Hyderabad to construct a residential building (stilt plus five upper floors) vide permit No.194/94, dated 16-10-2002. While doing so, they surrendered land measuring 132 square yards for road widening purposes;

ii) that he (petitioner No.1) and his wife purchased Flat No.203 in the building known as 'Gupta Towers', Raj Mohalla, Narayanguda, Hyderabad vide registered sale deed dated 31-7-2004;

iii) that at the time of purchase, respondent Nos.1 to 3

gave out that the building has been constructed in accordance with the sanctioned plan, but, later on, petitioner No.1 came to know that respondent Nos.2 and 3 raised construction in the garb of the order of status quo passed by the Court of

VI Junior Civil Judge, City Civil Court, Hyderabad in O.S.No.6306 of 2002;

iv) that he filed I.A.No.437 of 2006 for his own impleadment as also the impleadment of his wife as parties to the suit, but the same was dismissed by VI Junior Civil Judge, City Civil Court, Hyderabad. Subsequently, the suit filed by respondent Nos.2 and 3 was also dismissed by the concerned court on 10-3-2006, and

v) that due to illegal constructions made by respondent Nos.1 to 3, they have been deprived of the use and enjoyment of the building, portions of which are now being used for commercial purposes.

We have heard Sri P. Radhakrishna, learned counsel for the petitioners and scrutinized the record. In our opinion, the writ petition is liable to be dismissed because the petitioners have already availed remedy by invoking jurisdiction of the civil court. As per their own showing, the petitioners filed I.A.No.437 of 2006 for their impleadment as parties to the suit and I.A.No.436 of 2006 for reopening of the order of injunction passed in favour of respondent Nos.2 and 3. Both the applications were dismissed by VI Junior Civil Judge, City Civil Court, Hyderabad. If the petitioners are aggrieved by the orders of the trial court, then the only appropriate remedy available to them is to file appeal and/or revision before the superior courts. They cannot turn

around and invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India in the guise of seeking a mandamus for initiation of action against respondent Nos.4 to 9 who are said to have facilitated the construction of building by respondent Nos.2 and 3 in violation of the sanctioned plan.

With the above observations, the writ petition is dismissed leaving the petitioners free to avail appropriate remedies against orders dated 10-3-2006 passed in I.A.Nos.436 and 437 of 2006. They are also given liberty to file civil suit in the matter of the alleged breach of contract by respondent Nos.2 and 3.

As a sequel to dismissal of the writ petition, WPMP.No.10589 of 2007 filed by the petitioners for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

20th April, 2007

C.V.NAGARJUNA REDDY, J.

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